

MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Weapons Offenses Sentenced in 2011

Published November, 2012

Minnesota Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Voice: 651.296.0144 Fax: 651.297.5757
TTY: 1-800-627-3529, ask for 651.296.0144

Website: www.msgc.state.mn.us
E-mail: sentencing.guidelines@state.mn.us

Reports are available in alternative formats upon request.

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Summary of 2011 Data

This report summarizes the mandatory minimum provisions for weapon offenses and describes the relationship and interaction between the mandatory minimums and the Sentencing Guidelines. The main body of the report focuses on sentencing practices for offenders sentenced in 2011, whose most serious conviction offense carried a mandatory minimum prison sentence under Minn. Stat. § [609.11](#). A weapon offense was identified based on whether the sentencing worksheet indicated that a finding was made that a weapon was involved and that the mandatory minimum provisions of Minn. Stat. § [609.11](#) applied. A discussion of the data, and their limitations, is included at the end of this report.

In 2011, 96 percent of the cases involving a dangerous weapon resulted in a sentence that included incarceration in a state or local facility: 59 percent were sentenced to prison and 37 percent received time in a local facility as a condition of probation. Imprisonment rates were significantly higher for offenders who had prior felony offenses (Figure 6). The rate for offenders with no prior felony offenses was 42 percent, compared to 72 percent for those with at least one prior felony offense. The average pronounced prison sentence was 68 months. Prison sentences ranged from 14 months for third-degree assault to 309 months for second-degree murder. Less than half (35%) of the cases involved the use of a weapon other than a firearm. Sixty-five percent involved a firearm: 17 percent involved the use of a firearm; 15 percent involved the possession of a firearm; 33 percent involved a felon in possession of a firearm. Convictions for second-degree assault accounted for 36 percent of the cases.

Minn. Stat. § 609.11 – Mandatory Minimum Provisions

Minnesota has had a mandatory minimum sentencing provision for certain felony offenses involving weapons since 1969, prior to the enactment of the Sentencing Guidelines. Minnesota Statute § [609.11](#), specifies the length of the mandatory minimum prison sentences that apply to offenses involving dangerous weapons and lists the conviction offenses to which the mandatory minimums apply. The statute evinces legislative intent to treat offenders who commit offenses with a dangerous weapon harshly. But there is also recognition that circumstances may exist that justify a sentence other than prison; therefore, except when the offense is a second or subsequent offense involving the use or possession of a firearm, Minn. Stat. § 609.11 allows for sentencing without regard to the mandatory minimum if substantial mitigating factors exist.

A mandatory minimum prison sentence applies if a finding of weapon involvement was made, and if the offender was convicted of one of the specific offenses listed in the statute. Minn. Stat. § [609.11](#), subd. 9. This mandatory minimum sentence applies regardless of the offender's presumptive sentence according to the Sentencing Guidelines Grid. Minn. Stat. § [609.11](#), defines the circumstances under which the mandatory minimums apply; the statute does not need to be cited in the complaint for the mandatory minimum to apply.

The statute specifies different penalties for firearm use and possession than for use of another dangerous weapon. The statute defines weapon use as, “brandishing, displaying, threatening with, or otherwise employing” a firearm or other dangerous weapons. The statute contains enhanced penalties for offenders who commit a second or subsequent offense. See Table 1 for specific mandatory minimums based on the type of weapon and type of use, as well as a history of the statute.

Table 1. Mandatory Minimum Sentences

Type of Weapon / Type of Use	First Conviction	Subsequent Conviction
<i>Committed on/after January 1, 1999</i>		
Other Dang. Weapon Use	1 yr & 1 day	3 years
Use or Poss. of Firearm	3 years	5 years
Felon in Poss. of Firearm	5 years	5 years
<i>Committed on/after August 1, 1996</i>		
Other Dang. Weapon Use	1 yr & 1 day	3 years
Use or Poss. of Firearm	3 years	5 years
Felon in Poss. of Firearm	18 months	5 years
<i>Committed on/after August 1, 1994</i>		
Other Dang. Weapon Use	1 yr & 1 day	3 years
Use or Poss. of Firearm	3 years	5 years
<i>Committed before August 1, 1994</i>		
Other Dang. Weapon Use	1 yr & 1 day	3 years
Possession of Firearm	1 yr & 1 day	3 years
Use Firearm	3 years	5 years

Prosecutorial and Judicial Responsibilities and Discretion (Minn. Stat. § 609.11, subds. 7 and 8)

The statute requires the factfinder to determine whether the defendant or an accomplice used or possessed a firearm or dangerous weapon in the commission of the offense at the time of a verdict or finding of guilt at trial, or the entry of a guilty plea. In addition, the factfinder must determine at sentencing whether the offense constitutes a second or subsequent offense.

The statute specifically allows the prosecutor to file a motion to have the defendant sentenced without regard to the mandatory minimum. The prosecutor must provide a statement as to the reasons for the motion. If the court finds substantial mitigating factors, the defendant may be sentenced without regard to the mandatory minimum.

The discretion to initiate a sentence other than the mandatory minimum was extended to the District Court in *State v. Olson*, 325 N.W.2d 13 (Minn. 1982).

For offenses committed on or after August 1, 1994, the court may not give a sentence less than the mandatory minimum if the offense is a second or subsequent dangerous weapon offense.

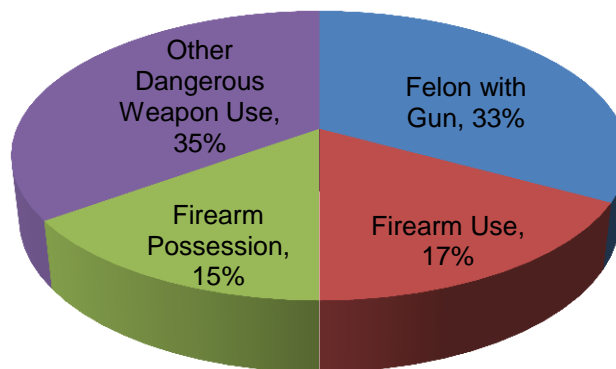
Case Volume and Distribution¹

When a legislatively established mandatory minimum prison term applies, the recommended disposition under the Sentencing Guidelines is always prison; the recommended duration is the mandatory minimum or the presumptive sentence on the Sentencing Guidelines Grid, whichever is greater.

Weapon Type and Offense

In 2011, 821 offenders were sentenced for using or possessing a weapon under Minn. Stat. § 609.11. Figure 1 shows that less than half of these cases (35%) cite the use of a dangerous weapon other than a firearm. The remaining sixty-five percent of cases involved a firearm: 17 percent involved use of a firearm, 15 percent involved possession of a firearm, and 33 percent involved felons in possession of a firearm as described in Minn. Stat. § [624.712](#), subd. 5.

Figure 1. Distribution of Cases by Weapon Type

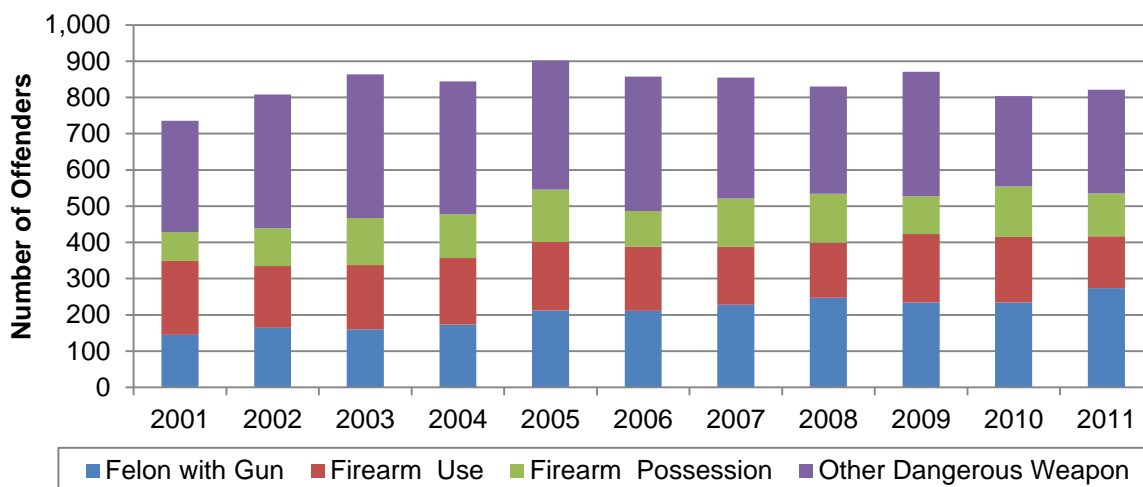


Over one-third (36%) of the offenders were convicted of second-degree assault, which is defined as assault with a dangerous weapon under Minn. Stat. § [609.222](#). Of those, 74 percent involved the use of a dangerous weapon other than a firearm; 18 percent involved the use of a firearm, and nine percent involved the possession of a firearm. Other than second-degree assault, the most frequently occurring offenses were possession of a gun by a felon (33%) and aggravated robbery (13%).

¹ It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

Figure 2 shows the number of weapons offenses each year, from 2001 through 2011. The number of weapons offenses peaked in 2005, with 902 offenders.

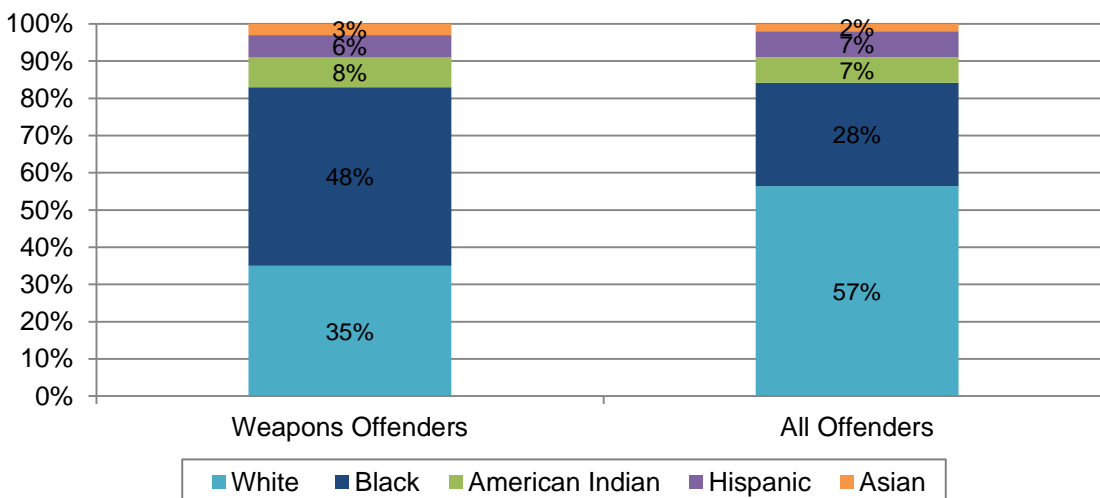
Figure 2. Number of Weapon Offenses, by Weapon Type: 2001-2011



Demographics

In 2011, 92 percent of the offenders were male; 48 percent were black, and 35 percent were white. As illustrated in Figure 3, the percentage of black offenders is much higher for weapons offenders than for the total felony offender population.

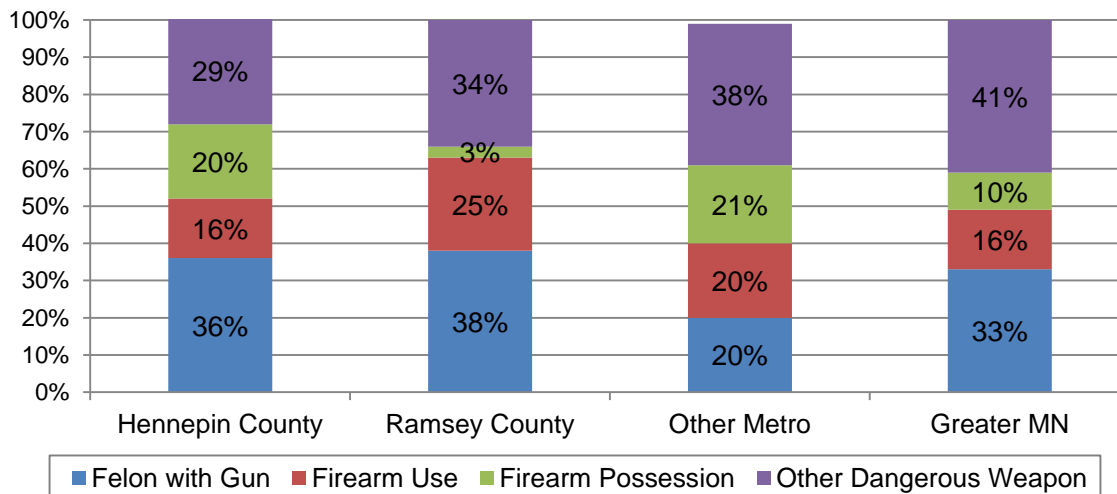
Figure 3. Distribution of Offenders by Race



Over one-half of the weapons cases examined in this report occurred in Hennepin County and Ramsey County (43% and 13%, respectively). The other metro counties accounted for roughly ten percent and Greater MN counties had 34 percent of the cases.

Figure 4 displays weapon type used or possessed by region. Compared to the statewide figures, Greater MN had a higher proportion of cases involving a weapon other than a firearm. Hennepin and the Other Metro counties had a higher proportion of cases involving a firearm.

Figure 4. Geographic Distribution by Weapon Type

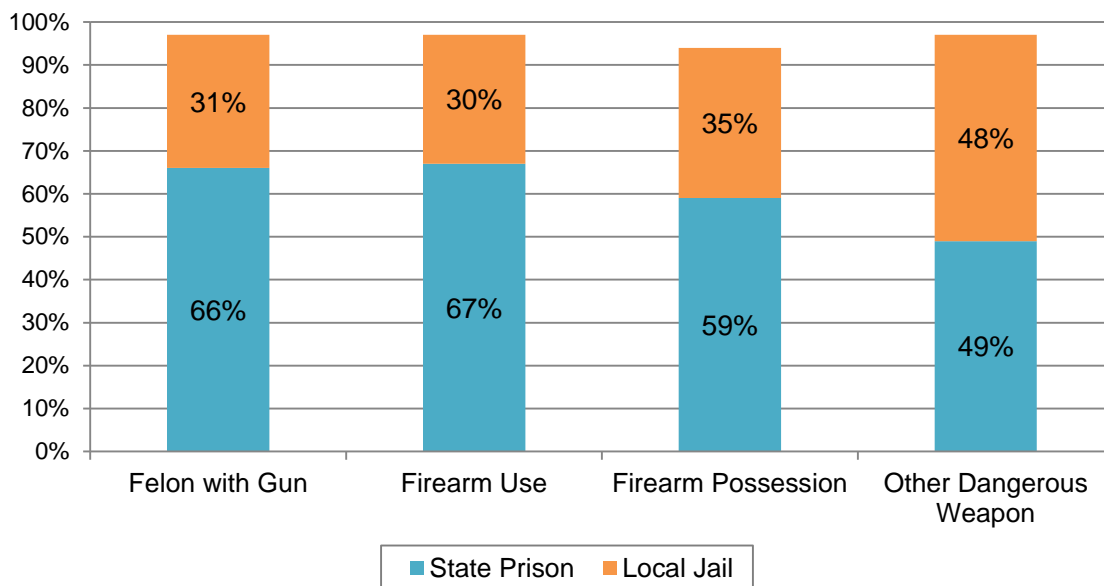


Sentencing Practices

Incarceration Rates

Ninety-six percent of cases resulted in a sentence that included incarceration in either a state or local facility (59% received a prison sentence; 37% received time in a local facility as a condition of probation). The imprisonment rate is similar to that observed in 2009 and 2010. Figure 5 shows the breakdown by weapon type and type of use.

Figure 5. Incarceration Rates by Weapon Type



There was a large variation in imprisonment rate, depending on the offense. For example, the imprisonment rate was 100 percent for first-degree murder and criminal sexual conduct, but was only 44 percent for second-degree assault (Table 6).

Of the 336 weapon offenders who did not receive a prison sentence, 91 percent served time in a local facility as a condition of probation.

Average Durations

The average pronounced prison sentence was 68 months (excluding offenders receiving life sentences), a decrease from 71 months in 2010. This average varied greatly by weapon type, averaging 114 months for use of a firearm, 61 months for possession of a firearm, 60 months for use of another dangerous weapon, and 55 months for possession of a firearm by a felon (Table 5). The average pronounced prison sentence also varied by offense, ranging from 14 months for third-degree assault to 309 months for second-degree murder (Table 7).

The average pronounced period of conditional confinement was 214 days. Again, this average varied by weapon type: 224 days for use of a firearm, 216 days for possession of a firearm, 174

days for use of another dangerous weapon, and 272 days for possession of a firearm by a felon (Table 5). Average conditional confinement also varied by offense. For example, the average was 81 days for third-degree assault and 365 days for second-degree murder (Table 7).

Second-Degree Assault

Second-degree assault, by statutory definition, involves the use of a dangerous weapon. Minn. Stat. § [609.222](#). However, the weapon may simply be “displayed” or actually “employed,” injury to the victim may or may not occur, and the type of weapon involved can vary widely (i.e., from a pool cue, to a knife, to a firearm). Circumstances surrounding the offense can also vary, from barroom brawls to unprovoked confrontations.

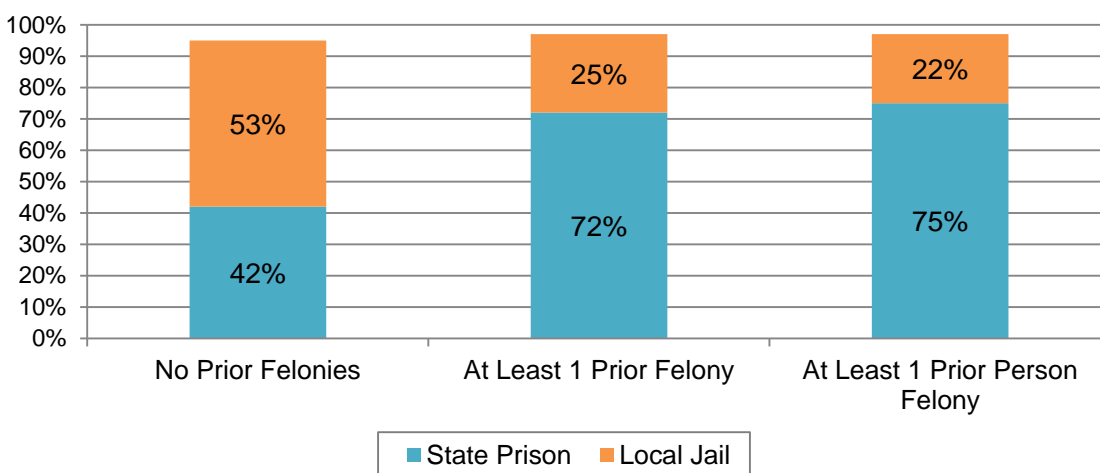
The imprisonment rate for second-degree assault involving the use of a gun was 52 percent; the rate was 36 percent for possession of a firearm; and 43 percent for use of another dangerous weapon.

Criminal History

Less than half of offenders (42%) had no prior² felony offenses listed on their sentencing worksheet; 73 percent had no prior felony person offenses.

Imprisonment rates were significantly higher for offenders who had prior felony offenses (Figure 6). The rate for offenders with no prior felony offenses was 42 percent, compared to 72 percent for those with at least one prior felony offense. This rate was higher, 75 percent, for offenders who had at least one prior felony level person offense.

Figure 6. Incarceration Rates by Criminal History



² For these purposes, “prior” means a disposition before the current offense of conviction. This is in contrast to current multiple offenses that are sentenced on the same day.

Departures from the Guidelines

The Guidelines establish a presumptive sentence for felony offenses based on the severity of the offense and the offender's criminal history score. The presumptive sentence is based on the typical case, however, the court may depart from the Guidelines when substantial and compelling circumstances exist. A "departure" is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures – dispositional and durational – as further explained below. Since the presumptive sentence is based on "the typical case," the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

While the court ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is typically agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

Description of Departure Types

Dispositional Departure. A "dispositional departure" occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: mitigated and aggravated. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence.

Durational Departure. A "durational departure" occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

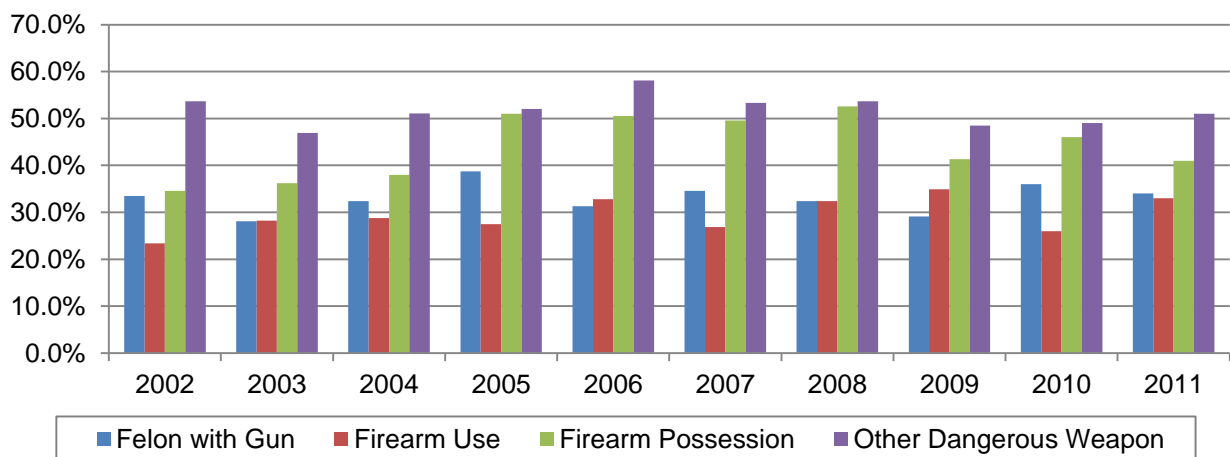
Departure Rates

Dispositional Departures

Mitigated dispositional departures occurred in 41 percent of the cases. As Figure 7 shows, the departure rate was higher when the weapon used was something other than a firearm (51%). The departure rate for possession of a firearm (41% in 2011) has consistently been higher than the departure rate for use of a firearm (33% in 2011), even though the mandatory minimums for the offenses have been the same since 1999.

Frequently cited reasons for departure included: the offender's amenability to probation or treatment, the offender's willingness to accept responsibility, and probation recommendations. In 57 percent of the mitigated dispositions, the court indicated that there was a plea agreement, the prosecution recommended the departure, or the prosecution did not object to the departure.

Figure 7. Mitigated Dispositional Departure Rates by Weapon Type: 2002-2011



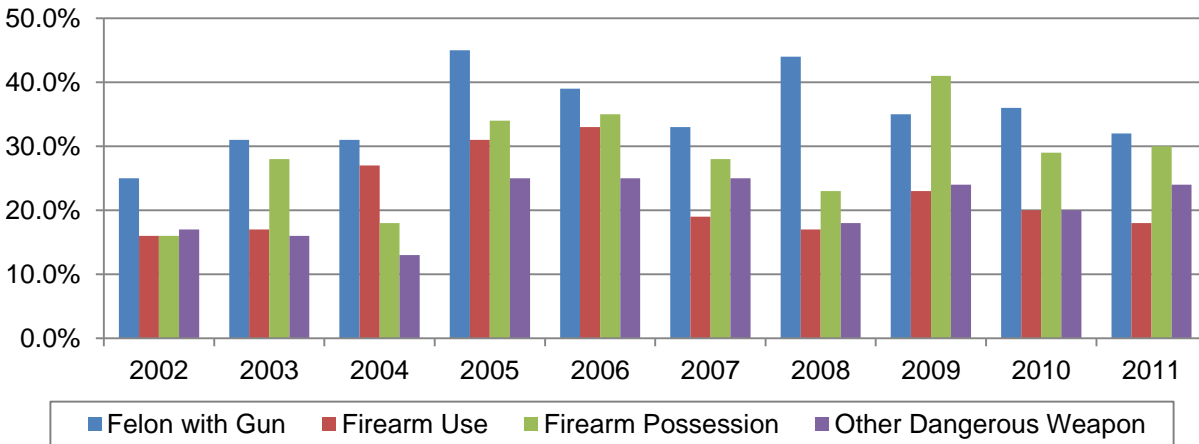
Durational Departures

Of the 477 weapons cases sentenced to prison (excluding life sentences), 337 (71%) received the presumptive sentence; 13 cases (3%) received longer durations; and 127 cases (27%) received shorter durations. In 62 percent of the mitigated durations, and 46 percent of the aggravated durations, the court indicated that there was a plea agreement, the prosecution recommended the departure, or the prosecution did not object to the departure.

Mitigated durational departure rates were highest for felon in possession of a firearm (32%); slightly lower than the 2010 rate of 36 percent (Figure 8). Cases involving possession of a firearm had a mitigated durational departure rate of 30 percent. For cases involving use of a firearm and use of another dangerous weapon, the mitigated durational departure rates were 18 percent and 24 percent, respectively.

In the case of second-degree assault, 21 percent received mitigated durational departures, while two percent were given aggravated durations. Of the offenses that had twenty or more cases (and other than felon in possession of firearm offenses), aggravated robbery offenses had the highest mitigated durational departure rates at 29 percent. First-degree assault and second-degree murder offenses had the highest rate of aggravated durational departures at 9 percent (4 cases) (Table 9).

**Figure 8. Mitigated Durational Departure Rates by Weapon Type:
2002-2011**



Data Sources and Limitations

MSGC Monitoring System

Most of the data examined in this summary are from the MSGC Monitoring System which contains cases sentenced in 2011. One of the primary functions of the Sentencing Guidelines Commission is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the guidelines. A case is defined when conviction data are received from the probation officer and matched with sentencing data from State Court Administration. Cases generally represent offenders; an offender sentenced in the same county on more than one offense within a thirty-day period is counted as one case.

Sentencing Guidelines Worksheets, submitted by probation officers to the court and to the Commission, contain information about the offender (e.g., date of birth, gender, race), the offenses for which the offender was convicted, the offender's criminal history and the presumptive guidelines sentence. The worksheet also contains a section in which the probation officer indicates if a weapon was involved in the current offense under Minn. Stat. § [609.11](#), and, if so, whether the offense involved the use of a firearm, possession of a firearm, or use of another type of dangerous weapon. As a result, identification as a weapon offense in the MSGC Monitoring System is dependent on the Worksheet.

Minnesota Offense Codes

Some additional information on weapon use is available using the Minnesota Offense Codes (MOCs). The MOC data indicate that it is likely, in some cases, that weapon information was inadvertently omitted from the worksheet, particularly in cases where the presumptive disposition, according to the guidelines, is commitment to prison, regardless of the dangerous weapon (i.e., offenses outside the shaded area of the grid). For most of these offenses, the presumptive duration exceeds the mandatory minimum. If the MOCs are used to identify such cases, it appeared that there could be as many as 132 additional cases (96 of which received a prison sentence).

There were also cases in which the MOCs indicated weapon use or possession for an offense covered by Minn. Stat. § 609.11, but the worksheet indicated a presumptive stayed sentence (probation). In 2011, there were 105 such cases. Burglary was the most prevalent offense (47%), followed by simple robbery (19%) and controlled substance offenses (22%). Information from the MOCs indicated that, in more than half of these cases (46%), the weapon used was a dangerous weapon other than a firearm.

It is important to note that the information contained in the MOCs used to identify the cases listed is very limited. The codes do not provide the necessary information to determine whether the worksheet was in error or whether weapon involvement was actually determined, even though the weapon was alleged in the complaint and carried through to the offense codes.

Data Summary Tables

Table 2. Distribution of Weapons Cases by Weapon Type/Type of Use

Weapon Type/Type of Use	Number	Percent
Use of a Firearm	143	17%
Possession of a Firearm	118	14%
Use of Another Dangerous Weapon	286	35%
Possession of Firearm by Ineligible Felon	274	33%
Total	821	100%

Table 3. Distribution of Weapons Cases by Offense

Offense	Number	Percent
Murder 1	10	1.2%
Murder 2	23	2.8%
Manslaughter	4	0.5%
Assault 1	26	3.2%
Assault 2	293	35.7%
Assault 3	4	0.5%
Aggravated Robbery	103	12.5%
Kidnapping	2	0.2%
Criminal Sexual Conduct	3	0.4%
Burglary	28	3.4%
Controlled Substances	35	4.3%
Drive-by Shooting	11	1.3%
Possession of Firearm by Ineligible Felon	274	33.4%
Stalking	3	0.4%
Total	821	100%

Table 4. Incarceration Rates by Weapon Type/Type of Use

Weapon Type/Type of Use	Total Number of Cases	State Prison	Local Confinement (as a Condition of Probation)	Total Incarceration
Use of a Firearm	143	96 (67%)	43 (30%)	139 (97%)
Possession of a Firearm	118	70 (59%)	41 (35%)	111 (94%)
Use of Another Dangerous Weapon	286	139 (49%)	136 (48%)	275 (96%)
Possession of Firearm by Ineligible Felon	274	180 (66%)	84 (31%)	264 (96%)
Total	821	485 (59%)	304 (37%)	789 (96%)

Table 5. Average Pronounced Prison Sentence and Local Incarceration

Weapon Type/Type of Use	Number of Cases ³ (Prison)	Average Pronounced Prison Sentence (Months)	Number of Cases (Stayed with Jail Time)	Average Pronounced Local Confinement (Days)
Use of a Firearm	90	114	43	224
Possession of a Firearm	70	61	41	216
Use of Other Dangerous Weapon	137	60	136	174
Poss. of Firearm by Ineligible Felon	180	55	84	272
Total	477	68	304	214

³ Excludes life sentences

Table 6. Incarceration Rates by Offense Categories

Offense Type	Total Number of Cases	State Prison	Local Confinement (as a Condition of Probation)	Total Incarceration
Murder 1	10	10 (100%)	----	10 (100%)
Murder 2	23	22 (96%)	1 (4%)	23 (100%)
Manslaughter	4	3 (75%)	1 (25%)	4 (100%)
Assault 1	26	22 (85%)	4 (15%)	26 (100%)
Assault 2	293	128 (44%)	149 (51%)	277 (95%)
Assault 3	4	3 (75%)	1 (25%)	4 (100%)
Aggravated Robbery	103	70 (68%)	30 (29%)	100 (97%)
Simple Robbery	2	2 (100%)	---	2 (100%)
Kidnapping	2	----	2 (100%)	2 (100%)
Criminal Sexual Conduct	3	3 (100%)	---	3 (100%)
Burglary	28	16 (57%)	12 (43%)	28 (100%)
Controlled Substances	35	18 (51%)	15 (43%)	33 (94%)
Drive-by Shooting	11	5 (46%)	5 (46%)	10 (91%)
Possession of Firearm by Ineligible Felon	274	180 (66%)	84 (31%)	264 (96%)
Stalking	3	3 (100%)	---	3 (100%)
Total	821	485 (59%)	304 (37%)	789 (96%)

Table 7. Average Pronounced Prison Sentence and Local Confinement by Offense Categories

Offense Type	Number of Cases (Prison)	Average Pronounced Prison Sentence (Months)	Number of Cases (Stayed with Jail Time)	Average Pronounced Local Confinement (Days)
Murder 1 (Attempts) *	2	265	0	----
Murder 2	22	309	1	365
Manslaughter	3	97	1	285
Assault 1	22	120	4	342
Assault 2	128	37	149	167
Assault 3	3	14	1	81
Aggravated Robbery	70	70	30	262
Simple Robbery	2	33	0	---
Kidnapping	0	---	2	210
Criminal Sexual Conduct	3	213	0	----
Burglary	16	58	12	222
Controlled Substances	18	53	15	212
Drive-by Shooting	5	43	5	210
Possession of Firearm by Ineligible Felon	180	55	84	272
Stalking	3	15	0	---
Total	477	68	304	214

* Excludes life sentences for completed Murder 1

Table 8. Departure Rates by Weapon Type/Type of Use

Weapon Type/Type of Use	Mitigated Dispositional Departures		Durational Departures (Executed Sentences)		
	Total Number of Cases	Number Receiving Probation	Number Executed Sentences	Aggravated Durations	Mitigated Durations
Use of a Firearm	143	47 (33%)	90	4 (4%)	16 (18%)
Possession of a Firearm	118	48 (41%)	70	2 (3%)	21 (30%)
Use of Another Dangerous Weapon	286	147 (51%)	137	4 (3%)	33 (24%)
Possession of Firearm by Ineligible Felon	274	94 (34%)	180	3 (2%)	57 (32%)
Total	821	336 (41%)	477	13 (3%)	127 (27%)

Table 9. Departure Rates by Offense Categories

Offense Type	Mitigated Dispositional Departures		Durational Departures (Executed Sentences)		
	Total Number of Cases	Number Receiving Probation	Number Executed Sentences	Aggravated Durations	Mitigated Durations
Murder 1 (Attempts) *	2	0 (0%)	2	0 (0%)	0 (0%)
Murder 2	23	1 (4%)	22	2 (9%)	1 (5%)
Manslaughter	4	1 (25%)	3	0 (0%)	0 (0%)
Assault 1	26	4 (15%)	22	2 (9%)	6 (27%)
Assault 2	293	165 (56%)	128	2 (2%)	27 (21%)
Assault 3	4	1 (25%)	3	0 (0%)	0 (0%)
Aggravated Robbery	103	33 (32%)	70	2 (3%)	20 (29%)
Simple Robbery	2	0 (0%)	2	0 (0%)	1 (50%)
Kidnapping	2	2 (100%)	0	0 (0%)	0 (0%)
Criminal Sexual Conduct	3	0 (0%)	3	1 (33%)	0 (0%)
Burglary	2 8	12 (43%)	16	1 (6%)	6 (38%)
Controlled Substances	35	17 (49%)	18	0 (0%)	7 (39%)
Drive-by Shooting	11	6 (55%)	5	0 (0%)	2 (40%)
Possession of Firearm by Ineligible Felon	274	94 (34%)	180	3 (2%)	57 (32%)
Stalking	3	0 (0%)	3	0 (0%)	0 (0%)
Total	821	336 (41%)	477	13 (3%)	127 (27%)

* Excludes life sentences for completed Murder 1

How the Guidelines Work

Minnesota's sentencing guidelines are based on a grid structure. The vertical axis of the Grid represents the severity of the offense of conviction and the horizontal axis represents a measure of the offender's criminal history.

Conviction offenses are ranked according to their severity on a scale. The criminal history score represents a weighted measure of the offender's prior felony record; a limited measure of the offender's prior misdemeanor, gross misdemeanor and juvenile record; and a measure of whether the offender was under some type of custody or supervision at the time the offense was committed (e.g., on probation, confined, etc.).

The recommended (presumptive) Guideline sentence is generally found by locating the cell of the sentencing grid where the offender's criminal history score and severity level intersect. For cells in the shaded areas of the applicable Grid, the Guidelines generally recommend a stayed sentence. When a sentence is stayed, the court places the offender on probation and may require up to a year of conditional confinement in a local jail. Other conditions – such as fines, restitution, community work service, treatment, house arrest, etc. – may also be placed on the offender.

For cells outside the shaded areas of the applicable Grid, the Guidelines recommend imprisonment in a state prison. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where an offender falls on the applicable Grid, including any offense carrying a mandatory minimum prison term pursuant to Minn. Stat. § [609.11](#).

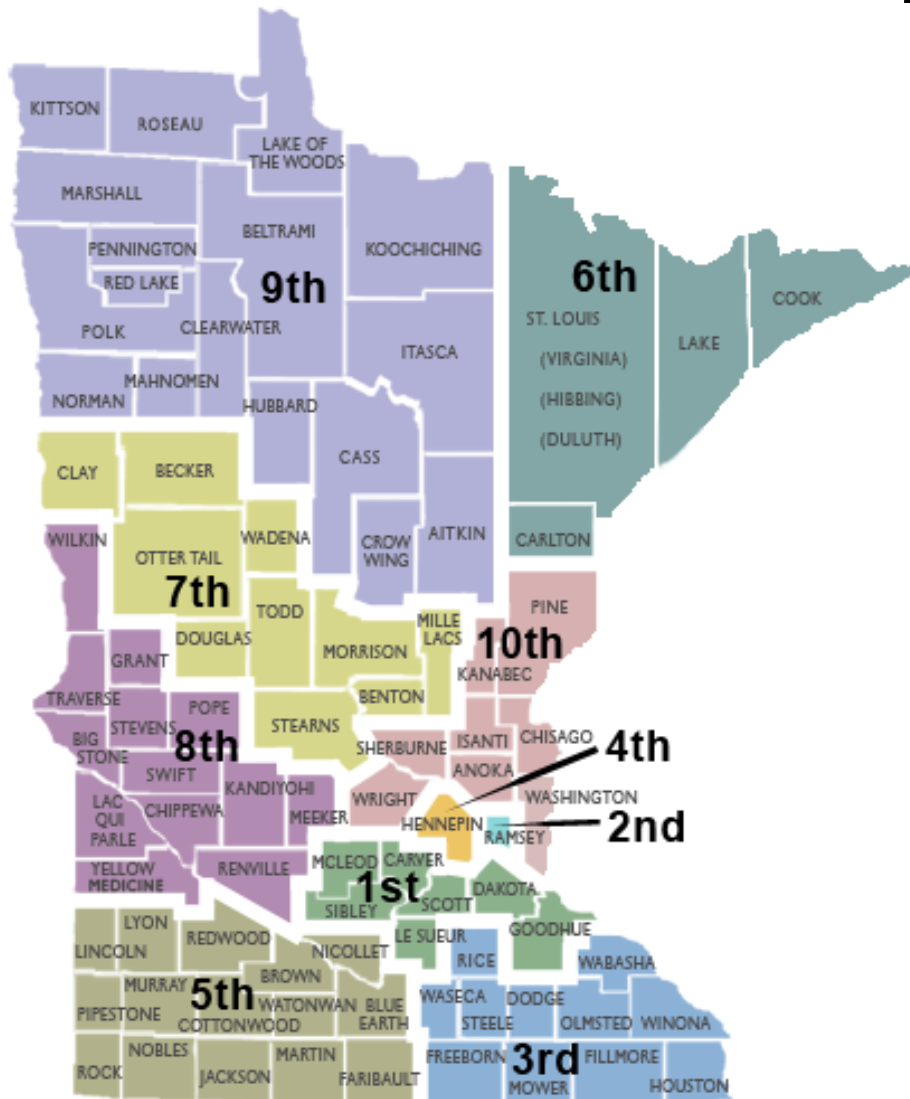
The numbers in the cells of the applicable Grid are the recommended prison sentence in months. For cases in which a mandatory minimum prison term applies, the presumptive duration under the Guidelines is the mandatory minimum or the cell time, whichever is greater.

The sentencing court may depart from the presumptive sentence if there are substantial and compelling circumstances. The district court must state the reason(s) for departure on the record and either the prosecution or the defense may appeal any pronounced sentence.

Regardless of where an offender falls on the applicable Grid, if the conviction offense is covered by Minn. Stat. § [609.11](#), and a finding was made that a firearm was used or possessed, or a weapon other than a firearm was used, the presumptive sentence under the Guidelines is prison. When the prosecutor or the court makes a motion to sentence apart from the mandatory minimum, it becomes legal to stay imposition or execution of sentence, or to impose a lesser sentence than the mandatory minimum. However, the presumptive disposition for the case is still imprisonment; the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater.

It is important to note that confusion sometimes arises in the interpretation of how the mandatory minimum statute and the Guidelines policy interact. Practitioners differ in their interpretation of when the mandatory minimum applies. In addition, offenders can fall within the shaded area of the applicable Grid, but the presumptive disposition is prison if the mandatory minimum applies, even though the statute and case law permits the judge to sentence without regard to the mandatory minimum.

Minnesota Judicial District Map



<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Fifth</u>	<u>Sixth</u>	<u>Seventh</u>	<u>Eighth</u>	<u>Ninth</u>	<u>Tenth</u>
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota		Fillmore		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
LeSueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Morrison	LacQuiParle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Otter Tail	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Stearns	Pope	Itasca	Washington
		Steele		Martin		Todd	Renville	Kittson	Wright
		Wabasha		Murray		Wadena	Swift	Koochiching	
		Waseca		Nicollet			Traverse	Lake-Woods	
		Winona		Nobles			Wilkin	Norman	
				Pipestone			Yellow Medicine	Pennington	
				Redwood				Polk	
				Rock				Red Lake	
				Watonwan				Roseau	

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Standard Sentencing Guidelines Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>)	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>)	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ²
<i>Controlled Substance Crime, 3rd Degree</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ 12¹=One year and one day


² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.


Sex Offender Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
CSC 1 st Degree	A	144 144-172	156 144-187	168 144-201	180 153-216	234 199-280	306 261-360	360 306-360 ²
CSC 2 nd Degree– (c)(d)(e)(f)(h) Prostitution; Sex Trafficking ³ 1 st Degree–1(a)	B	90 90 ³ -108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300	300 255-300 ²
CSC 3 rd Degree–(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2 nd Degree–1a	C	48 41-57	62 53-74	76 65-91	90 77-108	117 100-140	153 131-180	180 153-180 ²
CSC 2 nd Degree–(a)(b)(g) CSC 3 rd Degree–(a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 51-72	70 60-84	91 78-109	119 102-142	140 119-168
CSC 4 th Degree–(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 51-72	78 67-93	102 87-120	120 102-120 ²
CSC 4 th Degree– (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
CSC 5 th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²
Registration Of Predatory Offenders	H	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ 12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.

³ Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)